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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re B.R. et al., Persons Coming Under  
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.E.,

Defendant and Appellant.

E064506

(Super.Ct.No. RIJ104991)

OPINION

APPEAL from the Superior Court of Riverside County. Timothy F. Freer, Judge.  
Dismissed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, Larisa A.  
Reithmeier-McKenna, Deputy County Counsel, for Plaintiff and Respondent.

This case involves a mother who repeatedly failed to protect her children from severe sexual abuse by other family members. C.E. (mother) has three children, a daughter, B.R., who was 12 years old at the time of the dependency petition; a son, J.B., who was nine years old; and another daughter, M.E., who was 16 months old.<sup>1</sup> At the conclusion of the jurisdiction and disposition hearing on August 24, 2015, the juvenile court removed each child from her custody. The court placed B.R. and J.B. with their fathers and terminated dependency. As to M.E., the court bypassed reunification services for mother under Welfare and Institutions Code section 361.5, subdivision (b)(3)<sup>2</sup> and set a section 366.26 hearing.

On September 18, 2015, mother filed her notice of appeal. On October 1, 2015, we dismissed her appeal as to M.E. because she had not filed a writ petition to preserve her right to appeal in M.E.'s case. On December 3, 2015, we issued a partial remittitur as to M.E. On March 4, 2016, mother's appellate counsel filed a motion to recall the partial remittitur.

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<sup>1</sup> Each child has a different biological father, none of whom are parties to this appeal.

<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

# I

## FACTS AND PROCEDURAL BACKGROUND

### A. *The Dependency Petition*

On June 5, 2015, plaintiff and respondent, Riverside County Department of Public Social Services (the Department), received a referral that B.R., mother's 12-year-old daughter had been molested by her stepfather, Mario. At the time, B.R. was living with Mario, mother, and J.B. in a home in Hemet. Mother and Mario had recently had a baby girl, M.E.

B.R. received a child abuse and neglect (CAN) examination, during which she told the examiner that Mario had been sexually abusing her since April 2015, every Friday night after her mother and siblings had gone to bed. Mario had moved in with her family when she was six years old, but he did not start molesting her until she was 12. B.R. reported Mario had orally copulated her and put his penis in her mouth. On several occasions, Mario vaginally and anally raped B.R. until "white stuff came out." B.R. reported that her great-uncle used to molest her as well. The examination revealed B.R. had tearing to her hymen, a blood blister in her anus, a hickey on her breast, and chapped nipples.

When the social worker informed mother of B.R.'s allegations, mother "immediately began sticking up for [Mario]," stating multiple times that he "would not do anything to [B.R.]." Mother claimed there was "no way" Mario had ever molested B.R. because Mario was always at work and she was always home at night. A Hemet

police detective also questioned mother about the allegations. When the detective told her the allegations had come from B.R., who was “telling the truth,” she “shook her head right and left as if to imply ‘No,’ that it did not happen.” Mother theorized that B.R.’s biological father had made up the allegations.

The detective asked mother what she would have done about the sexual abuse had she known about it. Mother responded, “I don’t know. I don’t know.” The detective continued to provide mother with information supporting B.R.’s allegation and mother continued to deny the possibility that Mario had molested her daughter.

Eventually, mother admitted during the interview that she and Mario used to have sex nearly every day of the week, but since M.E. had been born (a little over a year before) that frequency had “drastically minimized.” She recalled having sex with Mario once since April 2015. Mother admitted that B.R. “would make comments such as ‘there’s stuff I can’t tell you. You’ll get mad,’ ” and that B.R. had been cutting herself on her arms. Mother also admitted B.R. had been sexually molested in the past.

Mother reported that child protective services (CPS) had removed her children once in 2002 after the police searched her house and found drugs, and another time because B.R.’s great-uncle was sexually molesting B.R. Mother stated she was shocked that she had let this “happen again,” and that it was her fault because she cannot protect her daughter. The social worker observed that mother did not appear genuinely upset by the allegations.

When the social worker asked mother what she would do to protect her children and ensure their safety, she “continually kept saying she did not know.” The social worker tried to help mother “come up with a plan to protect her children,” but mother was “unable to do so.”

The maternal grandmother (grandmother) told the social worker that, looking back, there had been signs something was not right between B.R. and Mario. She reported B.R. and Mario had seemed “too cozy” and Mario was never able to look her in the eye. The maternal grandfather also reported seeing Mario and B.R. being “physically very close with one another.”

J.B., mother’s nine-year-old son, reported that he had also noticed a strange relationship between Mario and B.R. J.B. told the social worker that Mario was much closer to B.R. than he was to him, that Mario and B.R. would “hang out more as if they were best friends,” and that he sensed something was not right.

J.B. also told the social worker he had been molested by a same-age cousin when he was eight years old. J.B.’s cousin had forced J.B. to suck his (the cousin’s) penis and had forced J.B. to put his penis in his (the cousin’s) anus. According to J.B., this occurred about 15 times in an alleyway behind his old house. J.B. described the abuse as “scary in every way.” J.B. told mother about the abuse when it happened.

On June 8, 2015, the Department placed B.R. in the care of her biological father, G.R., and placed J.B. and M.E. in two different foster homes. The next day, the Department filed a dependency petition alleging, as relevant here, that mother failed to

protect B.R. from sexual abuse by Mario. The petition also alleged mother had failed to protect B.R. from sexual abuse by other perpetrators over the past nine years. On June 18, 2015, the Department filed an amended petition adding the allegation that mother also failed to protect J.B. from sexual abuse. The petition alleged M.E. was a dependent of the court within the meaning of section 300, subdivision (j) because M.E.'s sibling, B.R., had been sexually abused under mother's care and M.E. was therefore at risk of suffering similar harm.

*B. Mother's History with CPS and Sexual Abuse*

In 2002, when B.R. was just a few months old, the police executed a search warrant at mother and G.R.'s residence and found both parents under the influence of methamphetamine and in possession of drug paraphernalia. Mother admitted to using methamphetamines and reported domestic violence had occurred between her and G.R. CPS removed B.R. from both parents. In 2003, mother successfully reunified with B.R. and the court awarded her sole legal and physical custody.

In 2006, when B.R. was four years old, she reported being sexually molested by her great-uncle Walter. Walter was living at grandmother's house, where B.R. was being babysat daily. B.R. reported Walter would show her his "potty" (penis) and touch himself when they played hide and seek. The Department provided mother with referrals for counseling with Victims Assistance, and mother agreed to prohibit Walter from having any further contact with B.R. The Department closed the case because mother appeared protective.

In 2007, the Department received a referral reporting Walter was molesting B.R. again and B.R. had been taken to the hospital after urinating blood. Mother said it was “possib[le]” Walter had been molesting B.R. again and that “they would have to possibly move again.” During this investigation, mother was arrested because she had outstanding felony warrants (one of which was for child endangerment/abuse), as well as four misdemeanor warrants. The Department placed B.R. and J.B., who was then not quite two years old, in a foster home.

In 2009, when B.R. was six years old, a CAN examination confirmed she had once again been sexually abused by Walter at grandmother’s house. Mother was living at grandmother’s house at the time, but denied having any knowledge of the molestation. Mother reportedly quit her job to watch her children and once again appeared protective.

*C. The Jurisdiction and Disposition Hearing*

On August 24, 2015, the court held the jurisdiction and disposition hearing. Mother was present and represented by counsel. The Department requested family law orders placing B.R. and J.B. in their fathers’ sole legal and physical custody. As to M.E., the Department requested bypassing reunification services to mother pursuant to section 365.1, subdivision (b)(3).<sup>3</sup> The minors’ counsel joined in the Department’s recommendation.

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<sup>3</sup> The Department alleged in its jurisdiction/disposition report that section 361.5, subdivision (b)(3) applied because B.R. had previously been removed from mother’s care as a result of a 2007/2008 dependency involving allegations that great-uncle Walter had sexually abused B.R.

Mother testified at the hearing. She said that in 2007 there was a dependency case involving Walter's molestation of B.R. She received and participated in reunification services, but B.R. was not returned to her care. Instead, B.R. was placed with her father, G.R. According to mother, she regained custody of B.R. two weeks later when G.R. "dropped [B.R.] off at my front door and left her there."

Mother also participated in reunification services in the 2006 dependency case. During this period, she attended parenting classes and counseling, and addressed issues of sexual abuse and molestation. She testified that during therapy she learned how to identify children who are being victimized as well as how to identify sexual predators. She learned that children who are molested often exhibit anger, shut down, and refuse to communicate.

Counsel for the Department and counsel for the minors asked mother several questions about B.R.'s and J.B.'s molestation. She admitted that when J.B. told her his cousin had been sexually abusing him, she did not report the abuse to law enforcement or seek counseling for J.B. She figured they were "just messing around as children." She allowed J.B. to continue going to the same school as the cousin because the boys were not in the same class.

At the end of mother's testimony, the court asked her: "[D]id you have any concerns, knowing your daughter was molested before, that she might be hiding the real truth as to why she was cutting herself [on her arms]?" Mother responded that her



daughter cutting herself because of molestation was the last thing that would cross her mind.

The court found the petition's allegations against mother true. It also found that removal of all three children from mother's care was necessary under section 361, subdivision (c)(1) in order to protect them from substantial harm. The court stated: "There are three children, two of them have been molested significantly in mother's care and protection. . . . [¶] Clearly, there is a demonstration by clear and convincing evidence that mother not only has a failure to protect and an inability to protect, or an inability to recognize the signs, despite going through parenting classes, despite all the warning signs, despite her daughter cutting herself, despite the fact that her daughter came and said, there's something I need to tell you, but I can't because you might get mad, despite all the red flags there's a significant molestation."

The court placed B.R. and J.B. with their fathers with family law orders and terminated dependency as to them. In M.E.'s case, the court bypassed providing reunification services to mother under section 361.5, subdivision (b)(3), finding clear and convincing evidence that services would not be in the child's best interest. The court then set a section 366.26 selection and implementation hearing for M.E.

D. *The Remittitur in M.E.'s Case*

After the court set M.E.'s section 366.26 hearing, it ordered the clerk to "serve mother her writ rights at this time." The minute order states mother was served "with written Writ Rights in open Court." The minute order further states: "The court advised

all parties present in court that *to preserve any right to review on appeal of this order, a party must seek an extraordinary writ* by filing notice of intent to file a writ petition . . . which may be submitted on . . . (form JV-820) and a petition for extraordinary writ, which may be submitted on . . . (form JV-825). A copy of each form has been given to each parent present. . . . [A] notice of intent to file a writ petition and request for record *must be filed . . . within seven days of the date of this hearing.*” (Italics added.)

The court concluded the hearing by stating, “All right. Madam Clerk has served mother with her writ rights[,]” and ordering the clerk’s office to send M.E.’s father, Mario, his writ rights by mail because he was not present.

Mother did not file a writ petition.

On September 18, 2015, trial counsel filed a notice of appeal on mother’s behalf. On October 1, this court dismissed mother’s appeal as to M.E. on the ground that mother had not filed a writ petition to preserve her appellate rights. We allowed the appeal to proceed only as to minors B.R. and J.B. On November 25, we appointed an attorney to represent mother on appeal.

On December 3, we issued a partial remittitur as to M.E.

## II

### REQUEST FOR DISMISSAL

After we issued our tentative opinion and scheduled oral argument per mother’s request, mother filed a notice of abandonment and request for dismissal.

An appellant may not dismiss an appeal as a matter of right. (*Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1160 [imposing \$6,000 sanctions on attorney for unreasonable delay in notifying appellate court that parties had settled and dismissed the underlying case].) California Rules of Court, rule 8.244(c)(2) provides that upon receiving a request to dismiss, “the court *may* dismiss the appeal and direct immediate issuance of the remittitur.” (Italics added.) Here, we exercise our discretion to grant mother’s request and dismiss the appeal.

### III

#### DISPOSITION

The appeal is dismissed.

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SLOUGH  
J.

We concur:

HOLLENHORST  
Acting P. J.

MILLER  
J.